

*Melody*  
*24647*

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-207850.2

**DATE:** March 30, 1983

**MATTER OF:** G & C Enterprises, Inc.

**DIGEST:**

Protest is dismissed where the material issues are before a court of competent jurisdiction and neither the plaintiff nor the court has indicated any interest in GAO's decision.

G & C Enterprises, Inc. protests the cancellation of invitation for bids (IFB) No. DACA51-82-B-0071, issued by the U.S. Army Corps of Engineers for construction of a heat recovery incinerator at Fort Dix, New Jersey. The Corps canceled the solicitation after bid opening when it determined that three of the four lowest bids received were nonresponsive for failing to conform to the descriptive literature clause in the solicitation. The cancellation was based on the Corps' opinion that the descriptive literature clause used was ambiguous and had prejudiced the three firms whose bids were rejected. Further, the Corps states that it does not have sufficient funds to award this contract to G & C at its price of \$5,386,700. G & C, the low responsive bidder, contends that the descriptive literature clause was sufficient and that it thus should receive the award under the solicitation as originally issued. We dismiss the protest.

On March 1, 1983, subsequent to filing its protest in our Office, G & C filed suit against the United States in the United States Claims Court (Civil Action No. 107-83T). The grounds presented as the basis for the suit are the same as those on which G & C's protest is based.

It is the policy of our Office not to decide protests where the material issues are before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in our decision. See 4 C.F.R. § 21.10 (1982). Neither G & C nor the Claims Court has expressed any interest in our decision. Thus, we dismiss the protest. See Bernard Cap Company, B-207699, September 21, 1982, 82-2 CPD 251.

*025003*

*Harry R. Van Cleve*  
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Acting General Counsel